

BILL ANALYSIS

C.S.H.B. 471
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Inadequacies in the state's workers' compensation system have resulted in certain first responders being terminated from their employment due to a work-related injury and in a lack of coverage for diseases and medical issues that arise as a result of employment. C.S.H.B. 471 seeks to address these inadequacies by establishing illness and injury leave protections for certain county and municipal responders, revising the scope of the provision making certain cancer coverage presumptions inapplicable to a first responder due to tobacco usage, and allowing first responders to claim a presumption for a heart attack or stroke that occurred up to eight hours post-shift.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Leave for Certain Firefighters, Police Officers, and Emergency Medical Services Personnel

C.S.H.B. 471 amends the Local Government Code to require a county or municipality to provide to a firefighter, police officer, or emergency medical services (EMS) personnel a leave of absence with full pay for a period commensurate with the nature of an illness or injury related to the person's line of duty. Regarding this leave of absence, the bill provides the following:

- the county or municipality must continue the leave for at least one year, if necessary, and the county's or municipality's governing body may further extend the leave at full or reduced pay at the end of the one-year period;
- a person whose leave is not extended or whose salary is reduced below 60 percent of the person's regular monthly salary and who is a member of a pension fund may retire on pension until able to return to duty;
- a person who is not a member of a retirement system with disability retirement benefits and is temporarily disabled by a line of duty injury or illness and whose one-year period and any applicable extensions have expired may use accumulated sick leave, vacation time, and other accrued benefits before being placed on temporary leave; and
- a person is placed on temporary leave if the person's one-year period and any extensions granted have expired.

C.S.H.B. 471 authorizes a firefighter, police officer, or EMS personnel who is temporarily disabled by an injury or illness that is not related to the line of duty to do the following:

- use accumulated sick leave, vacation time, and other accrued benefits before being placed on temporary leave; or
- have another firefighter, police officer, or EMS personnel volunteer do the person's work while the person is temporarily disabled by the injury or illness.

C.S.H.B. 471 authorizes a firefighter, police officer, or EMS personnel who is able to return to light duty while recovering from a temporary disability to do so. If medically necessary, the light duty assignment may continue for at least one year. The bill requires the person, after recovering from the temporary disability, to be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another firefighter, police officer, or EMS personnel may voluntarily do the work of an injured firefighter, police officer, or EMS personnel until the person returns to duty.

C.S.H.B. 471 requires a collective bargaining, meet and confer, or other similar agreement that provides a benefit for an ill or injured employee to provide a benefit that, at a minimum, complies with these bill provisions.

The bill's Local Government Code provisions apply only to a collective bargaining, meet and confer, or other similar agreement entered into on or after the bill's effective date. For purposes of those provisions, the bill clarifies who qualifies as a firefighter, police officer, or EMS personnel.

Benefits for Qualifying Public Employees Relating to Certain Diseases and Illnesses

C.S.H.B. 471 amends the Government Code to revise certain provisions regarding presumptions established in state law that a firefighter, peace officer, or emergency medical technician (EMT) is considered to have contracted a qualifying disease or illness during the course and scope of employment for purposes of benefits or compensation that the person is otherwise entitled to receive.

C.S.H.B. 471 changes the scope of the provisions excluding from any such presumption a person whose disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco if the person is or has been a user of tobacco or if the person's spouse has, during the marriage, been a user of tobacco that is consumed through smoking. The bill makes that exclusion applicable instead if the person has regularly used cigarettes, e-cigarettes, or another tobacco product in the seven years preceding the diagnosis of the disease or illness or if a person regularly residing with the person has, while regularly residing with the person, regularly used any such product during that period. The bill defines "cigarette," "e-cigarette," and "tobacco product" by reference to Health and Safety Code provisions.

C.S.H.B. 471 does the following with respect to the presumption, applicable to a firefighter, peace officer, or EMT, that an acute myocardial infarction or stroke resulted in disability or death suffered as a result of stressful or strenuous physical activity:

- removes language limiting the type of qualifying stressful or strenuous physical activity to only that which is nonroutine; and
- makes the presumption applicable to an infarction or stroke that occurs not later than eight hours after the end of a shift in which the person was engaging in the applicable activity and, accordingly, removes language limiting applicability to an infarction or stroke that occurs only while the person was engaging in the applicable activity.

The bill's Government Code provisions apply only to a claim for benefits or compensation brought on or after the bill's effective date.

Administrative Penalty

C.S.H.B. 471 amends the Labor Code to require the commissioner of workers' compensation, in determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice regarding the carrier's investigation of an injury for which a presumption established in the Government Code regarding diseases or illness suffered by detention officers, custodial officers, firefighters, peace officers, and EMTs is claimed, to additionally consider the following information:

- whether the employee promptly and accurately responded to an inquiry by the carrier regarding the use of cigarettes, e-cigarettes, or tobacco products by the employee or a person regularly residing with the employee within seven years of the diagnosis; and
- whether a person who regularly resided with the employee cooperated with the insurance carrier's investigation into, and promptly and accurately responded to an inquiry by the insurance carrier regarding, the person's use of cigarettes, e-cigarettes, or tobacco products.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 471 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute contain a provision regarding a firefighter, police officer, or EMS personnel whose leave of absence is not extended or whose salary is reduced below 60 percent of the person's regular monthly salary. Whereas the introduced specifies that such a person who is also a member of a retirement system with disability retirement benefits is considered eligible to receive the disability retirement benefits until able to return to duty, the substitute specifies instead that such a person who is a member of a pension fund may retire on pension until able to return to duty.

Both the introduced and the substitute include a provision that makes certain presumptions regarding a firefighter, peace officer, or EMT who contracts a qualifying disease or illness during the course and scope of employment inapplicable due to tobacco use by the person or the person's spouse and by the person or a person regularly residing with them, respectively, but they change the presumption in different ways with respect to both parties, as follows:

- the introduced based inapplicability of the presumption on the person's use of a tobacco product having occurred an average of four or more times per week during any six-month period in the five years preceding the diagnosis of the disease or illness, but the substitute bases inapplicability instead on the person having regularly used cigarettes, e-cigarettes, or another tobacco product in the seven years preceding the diagnosis of the disease or illness and, accordingly, includes a provision not in the introduced defining "cigarette," "e-cigarette," and "tobacco product"; and
- the introduced retained the inapplicability of the presumption currently based on the person's spouse having been a user of tobacco that is consumed through smoking during the marriage and additionally imposed the same frequency and five-year time frame conditions for the spouse's smoking as it imposed for the person's smoking, but the substitute expands the scope of the presumption to make it inapplicable instead to any person regularly residing with the person who regularly uses the tobacco products defined by the substitute during the same seven-year period of use prescribed for the person's tobacco use.

Both the introduced and the substitute provide for the presumption for an acute myocardial infarction or stroke to apply after the firefighter, peace officer, or EMT was engaging in the applicable activity. However, whereas the introduced made the presumption applicable for a person whose infarction or stroke occurred not later than 24 hours after the end of the shift in which the person was engaging in the applicable activity, the substitute makes the presumption applicable with respect to an infarction or stroke that occurs not later than eight hours after the end of the shift.

The substitute includes provisions that were not in the introduced requiring the commissioner of workers' compensation to consider certain information, with respect to prompt and accurate responses to inquiries regarding tobacco use, in determining whether to assess an administrative penalty involving certain claims under the Texas Workers' Compensation Act.

The substitute does not include the Labor Code provision or a related applicability provision that appeared in the introduced relating to injuries qualifying a person to lifetime workers' compensation income benefits until death.